

1 10A NCAC 14A .0103 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 14A .0103 DECLARATORY RULINGS**

4 (a) The Director of the Division of Health Service Regulation may ~~make~~ issue declaratory rulings. All requests for
5 declaratory rulings shall be written and submitted to: the Director, Division of Health Service Regulation, 809 Ruggles
6 Drive, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

7 (b) All requests for a declaratory ruling ~~must~~ shall include the following information:

8 (1) the name and address of the petitioner;

9 (2) a statement of all relevant facts if the person aggrieved requests a declaratory ruling as to the
10 applicability to a statute, rule, or order of the Division;

11 ~~(2) (3)~~ the statute or rule to which the petition relates;

12 (4) a statement regarding the petitioner's opinion as to any conflict or inconsistencies, if any, within the
13 Division regarding an interpretation of the law or a rule adopted by the Division to which the petition
14 relates;

15 ~~(3) (5)~~ a concise statement of the manner in which the petitioner is aggrieved by the rule or ~~statute~~ statute,
16 or its potential application to ~~him~~; him or her; and

17 ~~(4) (6)~~ the consequences of a failure to issue a declaratory ~~ruling~~; ruling; and

18 (7) the petitioner's opinion as to the potential impact of the declaratory ruling on the public.

19 (c) Whenever the Director ~~believes~~ finds for good cause that the issuance of a declaratory ruling will not serve the
20 public interest, he or she may ~~refuse~~ deny the request to issue ~~one~~ a declaratory ruling. ~~When good cause is deemed~~
21 ~~to exist, In such a case, the Director shall notify the petitioner in writing of his the decision in writing stating reasons~~
22 to deny the request for declaratory ruling and shall state the reason for the denial of a declaratory ruling; denial.

23 (d) ~~The Director may refuse to consider the validity of a rule and therefore refuse to issue a declaratory ruling; Good~~
24 cause for the denial of a declaratory ruling request includes, but is not limited to:

25 (1) the person submitting the request is not a person aggrieved; or

26 (2) there is no conflict or inconsistency within the Division regarding an interpretation of the law or a
27 rule adopted by the Division; or

28 ~~(1) (3)~~ if a situation where there has been similar controlling factual determination in a contested ~~case~~; case;
29 or

30 (4) if the request for declaratory ruling involves a factual context ~~being raised for a declaratory ruling~~
31 was that was specifically considered upon adoption of the rule being questioned as ~~evidence~~
32 evidenced by the rulemaking record; or

33 (5) the factual representations are not specific to the statute or rule being questioned; or

34 (6) issuing the declaratory ruling will not serve the public interest; or

35 ~~(2) (7)~~ if circumstances stated in the request or otherwise known to the agency show that a contested case
36 hearing would presently be appropriate.

~~(e) Where a declaratory ruling is deemed to be in the public interest, the Director shall issue the ruling within 60 days of receipt of the petition.~~

~~(f) (e)~~ A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be appropriate the Director may determine in a particular case.

~~(g) (f)~~ The Director may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

~~(h) A record of all declaratory ruling procedures shall be maintained for as long as the ruling has validity. This record will contain:~~

~~(1) the original request,~~

~~(2) reasons for refusing to issue a ruling,~~

~~(3) all written memoranda and information submitted,~~

~~(4) any written minutes or audio tape or other record of the oral hearing, and~~

~~(5) a statement of the ruling.~~

~~This record will be maintained in a file at the Division Office, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701 and will be available for public inspection during regular office hours.~~

History Note: Authority G.S. 143B-10; 150B-4;

Eff. November 1, 1989;

Amended Eff. November 1, ~~2010~~ 2010;

Readopted Eff. July 1, 2019.